

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA PHILLIPS,

Petitioner,

2:04-cv-1257-GEB-GGH-P

vs.

SCOTT KERNAN, et al.,

Respondent.

ORDER

Petitioner, a state prisoner proceeding through counsel, has timely filed a notice of appeal of this court's June 26, 2006, denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

A certificate of appealability should be granted for any issue that petitioner can demonstrate is “‘debatable among jurists of reason,’” could be resolved differently by a different court, or is “‘adequate to deserve encouragement to proceed further.’” Jennings v. Woodford,

1 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

2 Petitioner has made a substantial showing of the denial of a constitutional right in
3 the following issues presented in the instant petition: 1) admission of prior statement by Sabrina
4 R. violated the Confrontation Clause; 2) admission of videotaped statements by the other victims
5 violated the Confrontation Clause; and 3) insufficient evidence.

6 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
7 issued in the present action.

8 Dated: August 28, 2006

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10 /s/ Garland E. Burrell, Jr.
11 GARLAND E. BURRELL, JR.
12 United States District Judge
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25 ¹ Except for the requirement that appealable issues be specifically identified, the standard
26 for issuance of a certificate of appealability is the same as the standard that applied to issuance of
a certificate of probable cause. Jennings, at 1010.